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struck by wheel of truck, detached from truck because of the force of the impact when wheel of truck dropped suddenly and with great force into the rut.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 374.]

Error to Circuit Court of City of Norfolk.

Action by Queenie Tripp against the City of Norfolk. Demurrer to declaration sustained, and plaintiff brings error. Reversed and remanded.

H. C. Nicholas and *L. S. Parsons*, both of Norfolk, for plaintiff in error.

R. W. Peatross, of Norfolk, for defendant in error.

BIBBS *v.* COMMONWEALTH.

March 17, 1921.

[106 S. E. 363.]

1. Infants (§ 20*)—In Prosecution for Causing Girl to Commit Fornication, Held Not Error to Exclude Evidence to Prove Her Bad General Reputation.—In a prosecution, under Acts 1914, c. 228, for causing and encouraging a girl under 18 to commit fornication with accused, there was no error in refusing to permit accused to introduce evidence to prove her bad general reputation for chastity.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 313.]

2. Infants (§ 20*)—It Is an Offense to Encourage a Child to Commit a Misdemeanor, and Participation in Fornication with Her Makes Accused Guilty.—It is not essential to an offense, under Acts 1914, c. 228, making it a misdemeanor for a person over 18 to "cause or encourage" a child under that age to commit a misdemeanor, that accused should have "caused" prosecutrix to commit the misdemeanor, and he is guilty if he encouraged her to do so, and participating in fornication with her encourages her, and makes him guilty, though she may have made the first advance.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 142.]

Will A. Cook, of Madison, and *Geo. L. Browning*, of Orange, for plaintiff in error.

John R. Saunders, *Atty. Gen.*, and *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, for the Commonwealth.

TUCKER SANATORIUM, Inc., *v.* COHEN.

March 17, 1921.

[106 S. E. 355.]

1. Negligence (§ 108 (1)*)—Requisites of Declaration Stated.—A declaration in a negligence case should contain sufficient allegations

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of material facts to substantially inform the defendant of the nature and character of the demand against him, so that he may know how to present his defense, and should state such facts as would enable the court to say, if they are proved substantially as alleged, whether they establish a good cause of action, under Code 1919, § 6118.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 398.]

2. Hospitals (§ 8*)—Declaration Held to Sufficiently Allege Negligence of Hospital.—A declaration in an action by a patient for damages for a burn caused by hot-water bags upon his back held to contain sufficient allegations to inform defendant of the nature and character of the demand; and such facts as would enable the court to say, if they were proved, that they establish a good cause of action, in view of the nature and extent of the burn alleged, under Code 1919, § 6118.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 239.]

3. Hospitals (§ 8*)—Evidence of Burning by Hot-Water Bag Held Prima Facie Case of Negligence against Hospital.—Testimony, showing that an excessively hot-water bag was negligently placed at plaintiff's back by the attending nurse, a servant of the hospital, when the physician had not directed it, and while plaintiff was in a semi-conscious condition, which could not have occurred if the heat of the bag had been tested by the nurse, as was customary, and such bag was allowed to remain until it burned him seriously a half an inch deep, made a prima facie case of actionable negligence against the hospital.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 651.]

4. Appeal and Error (§ 1002*)—New Trial (§ 71*)—Finding of Jury on Conflicting Evidence Conclusive on Trial Court and Appellate Court.—A finding by the jury, based upon conflicting evidence involving the veracity and credibility of respective witnesses, is conclusive on the trial court and the appellate court.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 646, 647.]

5. Hospitals (§ 8*)—Evidence Sufficient to Sustain Finding that Condition of Patient Was Natural Result of Negligent Burn.—In an action against a hospital to recover damages for loss and suffering occasioned by negligent burn caused by hot-water bag, evidence held sufficient to sustain a finding that condition of plaintiff's back and loss and suffering of which he complained at time of trial was natural result of burn received, and was not due to infection occurring from lack of care of the burn by plaintiff's physician.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 322.]

6. Hospitals (§ 8*)—Instruction Held Properly Refused as Misleading.—Where plaintiff in action against hospital was seeking dam-

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ages for negligent burn and natural consequences thereof, court properly refused as misleading defendant's requested instruction, predicated on the assumption that plaintiff was seeking to hold defendant liable for negligence of physician or nurses in failing to take proper precautions to protect the burned place.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 727.]

7. Hospitals (§ 8*)—Modification of Instruction as to Cause of Suffering from Burn in Negligence Case Held Proper.—In an action against hospital for damages for alleged negligent burn by a hot-water bag, court did not err in modifying defendant's requested instruction by inserting the words, "is not the natural result of the burn received, but," so as to read, "that if the present condition of the plaintiff's back and the loss and suffering of which he complains is not the natural result of the burn received, but is due to infection occurring from the lack of care with respect to said burn in the operation performed by Dr. H. prior to the plaintiff's leaving the hospital of the defendant, or to reinfection after he left said hospital, the defendant cannot be held liable."

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 709.]

8. Hospitals (§ 8*)—Whether Burned Patient Exercised Good Faith in Not Undergoing Operation before Trial Held for Jury.—In an action against a hospital for damages and suffering caused by burn on back from hot-water bag, good faith of plaintiff in not undergoing a surgical operation before the trial, or lack of good faith in that particular, and whether he more probably would or would not have been cured by the time of the trial if he had undergone the operation, held peculiarly questions for the jury.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 350.]

9. Appeal and Error (§ 1002*)—Finding of Jury on Conflicting Evidence Not Disturbed on Appeal.—Conclusion of the jury upon a conflict of evidence sufficient to sustain a verdict either way will not be disturbed on appeal.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 646, 647.]

Error to Hustings Court of Richmond.

Action by Henry Cohen against the Tucker Sanatorium, Incorporated. Judgment for plaintiff, and defendant brings error. Affirmed.

Scott & Buchanan, of Richmond, for plaintiff in error.

J. R. Lenahan and *D. C. O'Flaherty*, both of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.